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June 29, 2004

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Verizon Commitment Letter, CC Docket Nos. 96-98, 01-338, and 98-147

Dear Ms. Dortch:

Broadview Networks, Inc., KMC Telecom III, LLC, NuVox, Inc., and Xspedius Communications, LLC, through their undersigned counsel, respectfully submit information to the Commission regarding commitments that Verizon has made before state public utility commissions to maintain unbundled network elements ("UNEs"). On June 11, 2004, Verizon filed a letter with the Commission in which it committed to provide "wholesale access to [its] narrowband network," and "to not unilaterally increase the wholesale price [it charges] for UNE-P arrangements that are used to serve mass market consumers...."¹

In contrast to this limited commitment, Verizon has made broader commitments before state public utility commissions. For example, in a letter that Verizon filed with the New Jersey Board of Public Utilities, Verizon states that it intends "to maintain the status quo for the duration of the proceeding...."² In other words, before both the New Jersey Board and the Florida Public Service Commission, Verizon has committed to make available to requesting

¹ Letter to the Honorable Michael K. Powell, Chairman, Federal Communications Commission, from Ivan G. Seidenberg, Chairman & CEO, Verizon (June 11, 2004) ("Commitment Letter").

² Letter to Kristi Izzo, Secretary, New Jersey Board of Public Utilities, from Bruce D. Cohen, Vice President & General Counsel, Verizon New Jersey Inc., at 2 (June 15, 2004) (quoting the Florida Public Service Commission finding in *Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile service providers in Florida by Verizon Florida Inc.*, Docket No. 040156-TP, Order No. PSC-04-0578-PCO-TP, at 6 (June 8, 2004).

Ms. Marlene Dortch
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carriers all UNEs – including UNE-P, and high capacity loops and transport – throughout the duration of the proceeding, not a limited period of time.

The Joint CLECs have attached a copy of Verizon's letter for your convenience.

Thank you for your attention to this matter. Please contact me if you have any questions regarding this filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large, sweeping initial "S" and a cursive "Augustino".

Steven A. Augustino

cc: Christopher Libertelli
Scott Bergmann
Daniel Gonzalez
Matthew Brill
Jessica Rosenworcel
William Maher
Jeffrey Carlisle
Michelle Carey
Jeremy Miller

Encl.

Bruce D. Cohen
Vice President & General Counsel
Verizon New Jersey Inc.



540 Broad Street, Floor 20
Newark, NJ 07102

June 15, 2004

By Hand

Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Re: **In the Matter of the Implementation of the Federal Communications
Commission's Triennial UNE Review Decision**
Docket No. TO03090705

Dear Secretary Izzo:

We are in receipt of Conversent Communications' letter of June 10, 2004, providing supplemental authority to its June 1, 2004, response to the Board's requests for comments. While Conversent provided the decisions of two state commissions purporting to require continuation of provision of UNEs¹ (mischaracterizing the substance of the Pennsylvania decision), and improperly added substantive advocacy in its putatively-supplemental correspondence, it also omitted the decisions of several state regulatory commissions that saw no purpose in entering such decisions and that declined motions before them for such relief. In fact, the majority of commissions that have considered "emergency" standstill requests have denied them.

As with Conversent, Verizon New Jersey Inc. respectfully brings these determinations to the Board's attention, to further assist it in its review of matters in the above-styled proceeding.

The Florida Public Service Commission, in an order granting a Verizon Florida Inc. motion to hold a TRO-related in abeyance, expressly rejected a CLEC demand for relief similar to that which the Board has contemplated in this proceeding:

¹ West Virginia Public Service Commission and Pennsylvania Public Utilities Commission. The Pennsylvania decision referred to in Conversent's letter addressed enterprise switching issues in the context of the PUC's reconsideration of its order emanating from the "90-day" TRO-related proceedings. *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market*, Docket No. 1-0003 0 100, Order on Reconsideration, entered May 28, 2004. Its remoteness to the present matter is self-evident.

As for the CLECs requests [sic] for additional, affirmative relief to require Verizon to implement the FCC rules on commingling and routine network modifications, as well as to require Verizon to refrain from implementing its own interpretation of the interconnection agreements unilaterally, these requests are denied. Specifically, the request that Verizon should be required to immediately implement the rules on commingling and routine network modifications appears contrary to the basis upon which I have decided to grant the Motion to Hold Proceedings in Abeyance, that being that the parties should have time to focus their efforts on negotiating modifications to their current agreements. **As to the request to require Verizon to maintain the status quo for the duration of the proceeding, Verizon has indicated that this is, in fact, its intent. Thus, it does not appear necessary at this time to affirmatively require Verizon to do so.**²

An Administrative Law Judge of the New York Public Service Commission denied a similar motion for a conditioned abeyance, holding that “[t]he condition of a status quo order requested by parties in their May 13, 2004 responses to Verizon’s motion is not granted, since it is premature, unnecessary and inappropriate for resolution at this time.”³ The ALJ stated,

It is understandable that, as the June 15, 2004 deadline approaches, the CLECs are becoming increasingly nervous about a potential interruption in service from Verizon once the vacatur goes into effect. **It appears that these fears, at least in the immediate term, are unfounded.** Clearly, Verizon agrees with MCI’s assertions that its rights and obligations with respect to provision of UNEs are governed primarily by its interconnection agreements.⁴

Likewise, the Vermont Public Service Board, recognizing that Verizon New England Inc. had already represented an intention to abide by its interconnection agreements, held that “[a] specific condition to that effect is not necessary.”⁵ On similar

² *In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile service providers in Florida by Verizon Florida Inc.*, Docket No. 040156-TP, Order No. PSC-04-0578-PCO-TP, issued June 8, 2004, at 6 (emphasis supplied).

³ *In re: Petition of Verizon New York Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order*, Case No. 04-C-0314, issued June 9, 2004, at 7. The NYPSC indicated that its ruling was without prejudice to the possibility of CLECs’ raising status quo-maintenance questions in the future, in a different or more appropriate forum.

⁴ *Id.* at 7 (emphasis supplied).

⁵ *In re: Petition of Verizon New England Inc., d/b/a Verizon Vermont, for arbitration of an amendment to interconnection agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio*

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grounds, the North Carolina Utilities Commission, finding "no cause to grant emergency declaratory relief at this time," denied an emergency ruling on the matter.⁶

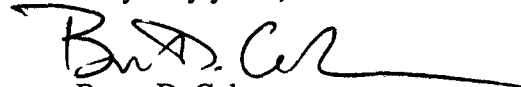
The Public Utility Commission of Texas addressed the issue on a stand-alone basis (rather than in the context of CLEC-demanded conditions for abeyance), and, relying upon the 90-day representations made by Verizon Southwest similar to those in this proceeding, was succinct:

Accordingly, at this time, given that provisioning and existing rates will continue at status quo, there does not appear to be a need for a hearing on interim relief in Docket No. 29824, or a need for immediate, interim clarification for purposes of Docket No. 29829.⁷

A Secretarial Letter to similar effect issued in New Hampshire, where the Public Utilities Commission "determined it need not make an expedited ruling on the CLEC Petition,"⁸ based on representations from Verizon NH similar to those filed here.

Copies of each of these orders are available on line from the respective agencies or on request from Verizon New Jersey Inc. Please do not hesitate to contact the undersigned should the Board require further information on this matter.

Very truly yours,



Bruce D. Cohen

cc: Service List

service providers in Vermont, pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order, Docket No. 6932, issued May 26, 2004, at 4.

⁶*In the Matter of Request of the Competitive Carriers of the South, Inc., for an Emergency Declaratory Ruling, Docket No. P-100, SUB 133t, issued June 11, 2004, at 2.*

⁷*Competitive Carrier Coalition Petition for Post-Interconnection Dispute Resolution and Request for an Interim Ruling that SBC Texas and Verizon Southwest Remain Required to Provision Unbundled Network Elements on Existing Rates and Terms Pending the Effective Date of Amendments to the Parties' Interconnection Agreement, Docket No. 29829, et al., issued June 11, 2004, at 6.*

⁸*In re: Petition for Expedited Order of A.R.C. Networks, et al., Docket No. DT 04-107, letter dated June 11, 2004.*